IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 11TH DECEMBER 2007 / 20TH AGRAHAYANA 1929

WP(C).No. 10588 of 2006(I)

PETITIONER:

T.M. BABURAJ, AGED 61 YEARS,
S/O. VELAYUDHAN, AYRIKANDIYIL PARAMBIL VEEDU,
P.O. PUTHIYARA, KOOTTILI AMSOM,
PARAYANCHERRY DESOM OF KOZHIKODE TALUK.

BY ADV. SRI.T.KRISHNAN UNNI

RESPONDENTS:

K.P. SAJEEV KUMAR, AGED 34 YEARS,
S/O. ASOK KUMAR, ALUKKAL BHAVAN,
PAYYAMBALAM AMSOM.

BY ADV. SRI.P.K.IBRAHIM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29-6-2007 , THE COURT ON 11-12-2007 DELIVERED THE FOLLOWING:

PETITIONER'S EXTS:

EXT.P1: TRUE PHOTOSTAT COPY OF THE ORDER OF SUBORDINATE JUDGE III(A) KOZHIKODE IN I.A..1159/2006 DATED 13-3-2006.

TRUE COPY

P.S.TO JUDGE

PIUS C. KURIAKOSE, J.

W.P.(C)No.10588 OF 2006

DATED THIS THE 11TH DECEMBER , 2007

J U D G M E N T

The defendant in O.S.No.88/2006 in the file of the Subordinate Judges Court, Kozhikode is aggrieved by Ext.P1 order passed by the learned Subordinate Judge dismissing an application for temporary injunction sought against him to the extent it directs him also to pay a sum of Rs.500/- as contribution to the District Legal Services Authority, Kozhkode. The suit was filed by the respondent for a decree of perpetual injunction to restrain the petitioner from trespassing into the plaint schedule property and from erecting any bill boards therein etc. I.A.No.1159/2006 was filed by the respondent seeking an interim order of injunction pending disposal of the suit. The case of the respondent was that the plaint schedule property was sold to him by the petitioner in the year 2002 vide document No.934/2002 of the Sub Registry, Chevayur and that eversince he has been in possession of the property. The allegation of the respondent is that the petitioner is attempting to erect huge bill boards in the property by trespassing into the same. Counsel for the petitioner contended that though it is true that document No.934/2002 was executed, the same was not

supported by consideration. It was further contended that when it was known that the intention of the respondent is to cheat and defraud the petitioner, without paying him consideration, the petitioner filed O.S.No.64/2006 before the Sub Court for cancellation of the document and for a consequential injunction to restrain the respondent from interfering in any way with the petitioner's possession and enjoyment of the properties and the court was pleased to grant an interim injunction restraining the respondent from alienating the property till final disposal of the petition. The petitioner has also contended that the respondent is guilty of suppressing material facts.

2. The learned Subordinate Judge considered the injunction petition. Upholding the contention that the respondent is guilty of suppression of material facts, the petition was dismissed. However, even as the petition was dismissed, the petitioner and the respondent were directed to pay Rs.500/- as contribution on the reason that the defence taken by the petitioner was frivolous and that both parties are guilty of wasting valuable judicial time.

3. In fact the order of the learned Subordinate Judge particularly paragraph 8 abounds in punchent and observations insinuating both the parties. Though the intentions of the learned Subordinate Judge

cannot be questioned even for a moment, it is doubtful whether on the facts of the case such observations were necessary for deciding the I.A.which he was called upon to decide. Three important questions have been raised in this writ petition:

(1) Is the court below right in imposing cost to a party who has succeeded in a petition filed against him ?

(2) Is the court below right in ordering cost/contributions to a third party, the District Legal Services Authority, who is not affected in any manner by the outcome of the suit. Does the civil court have the power to order cost to a third party ?

(3) Is the court below right in drawing presumptions regarding the merits and passing remarks on the conduct of the parties at the initial stage?

4. As far as third question is concerned, I have no doubt in mind that the civil court will be justified in a given case even while considering an interlocutory matter in drawing presumptions regarding the merits and passing remarks regarding the conduct of the parties to the extent necessary for deciding the interlocutory matter. As for question Nos.1 and 2, in my opinion it is not necessary to decide those questions in this writ petition. The fact remains that the

court below was not justified in directing the petitioner, the successful party to pay cost/contributions to the District Legal Service Authority. After all, the petitioner was only defending a suit and a petition which were filed against him. Therefore, without deciding the other questions, I vacate the order of the learned Subordinate Judge directing the petitioner to pay Rs.500/- as contribution to the District Legal Services Committee.

Allowing the writ petition to that extent, I direct that a sum of Rs.500/- deposited by the petitioner before the court below pursuant to the interim order passed by this Court will be released to him.

Sd/-

(PIUS C.KURIAKOSE, JUDGE)

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